THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

May 22, 1962

Mr. Henry Wade
District Attorney
Records Building
Dallas 2, Texas

Opinion No. WW-1336

Re: Liability of an undivided 1/3 interest in a tract of land owned by the Dallas County Hospital District for ad valorem taxes.

Dear Mr. Wade:

You have asked the opinion of the Attorney General as to whether the Dallas County Hospital District (hereinafter called the District) is liable for ad valorem taxes for 1961 on its one-third (1/3) undivided interest in the fee in certain real property owned by it on January 1, 1961. The other undivided 2/3 interests were owned by the Juliette Fowler Homes, Inc. and the Methodist Home. The property was a gift to the District.

You state the following pertinent facts:

> ". . . The deed conveying the property to the Dallas County Hospital District, the Juliette Fowler Homes, Inc. and the Methodist Home, Waco, Texas, is dated February 16, 1960. At the time of the receipt the Dallas County Hospital District was put on notice that all or a part of subject property would be taken by the Highway Department and thus planning on specific use was delayed until action was taken by the Highway Department.
>
> "After negotiation, approximately one-half of the lot was deeded, for consideration, to the State Highway Department, which sale included improvements thereon in the form of a house-apartment conversion. During the period from January 1 through July 15, 1961, however, income from rentals of the house received by the District totaled a net of $82.33, like amounts being received by the two charitable institutions. The

house was then removed by the State Highway Department.

"After such reduction in the size of the property, it was clear that no use could be made of the property as such and that the same should be sold as soon as feasible. Rental income received and income from sale, when accomplished, is planned for use, along with other available funds, in the development of a tubercular division of the Hospital District."

The question of the tax liability of the District arises because:

1) The District owns only an undivided interest in the fee instead of the entire fee in the tract of land;

2) During a portion of the year 1961 persons other than any of the owners were tenants in possession and using the property in its entirety, for which usage they paid money rentals to the joint owners of the property.

The law question arises as to whether the undivided interest in the realty belonging to the District was owned, held or used by it in such an exclusive manner and for a public purpose as to be exempt from ad valorem taxes levied against the land by the State of Texas, County of Dallas, City of Dallas and Dallas Independent School District.

The District was created under authority of Art. IX, Sec. 4 of our State Constitution and the enabling statute therein authorized, Art. 4494n, V.C.S.

1.

Our opinion is that the undivided interest owned by the District in this realty is exempt from these taxes.

2.

The District was expressly authorized to accept the property as a gift under Sec. 15 of Art. 4494n, which reads as follows:

"Said Board of Managers of the Hospital District is authorized on behalf of said Hospital District to accept donations, gifts, and endowments for the Hospital District, to be held in trust and administered by the Board of Managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by donor, not inconsistent with proper management and objects of Hospital District."

3.

The subject of the tax in question is an undivided interest in the fee simple title to the entire tract of land. This interest is real property and unless other provisions of law clearly exempt it from ad valorem taxes it is subject to such taxes under the following provisions of our State Constitution and statutes:

a) Art. VIII, Sec. 1 of our State Constitution, which in its pertinent portion reads:

". . . all property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, . . ."

b) Art. 7146 reads:

"Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same."

c) Art. 7319 which reads:

"For the purpose of taxation, real property shall include all lands within this State, and all buildings and

fixtures thereon and appertaining thereto, except such as are expressly exempted by law."

d) Art. 7149, which in its pertinent portion, reads as follows:

"'Tract or lot.' - The term, 'tract or lot,' and 'piece or parcel,' of real property, and 'piece and parcel' of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation."

Our State Constitution and statutes relevant to the situation under consideration provide that the following described properties shall be exempt from ad valorem taxes:

Art. VIII, Sec. 2 of our Constitution, in its pertinent portion, reads:

". . . the legislature may, by general laws, exempt from taxation public property used for public purposes; . . ." (underscoring added).

Art. XI, Sec. 9 of our Constitution, in its pertinent portion, reads:

"The property of counties, cities and towns, . . . and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, . . ." (underscoring added).

Art. 7150, V.C.S., in its pertinent portions, reads:

"The following property shall be exempt from taxation, to-wit. . .

". . .

"4. All property, whether real or personal, belonging exclusively to this State, or any political subdivision thereof, . . ." (underscoring added).

4.

The District is a political subdivision of the State. Bexar County Hospital District v. Crosby, 160 Tex. 116, 327 S.W.2d 445 (1959). Therefore the interest in the tract of land owned by the District qualifies for exemption from ad valorem taxes as being "public property" as required by Art. VIII, Sec. 2 of our Constitution (supra) and as "belonging exclusively to. . . any political subdivision" of this State as required by Art. 7150 (supra).

But our Constitution further requires that property to be exempt must be ". . .devoted exclusively to the use and benefit of the public. . ." (Art. XI, Sec. 9, supra) or ". . .used for public purposes. . ." (Art. VIII, Sec. 2, supra).

Our Supreme Court in Lower Colorado River Authority v. Chemical Bank & Trust Co., 144 Tex. 326, 190 S.W.2d 48 (1945) held that the portion of Art. XI, Sec. 9 of our Constitution which reads, "all other property devoted exclusively to the use and benefit of the public" was not circumscribed by the doctrine of ejusdem generis by way of restricting the application of this quoted portion by any of the preceding portion of the Section. This Section in its entirety reads as follows:

> "The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing."

Further distinguishing governmental and public usage, the Court said:

> "'The test is not whether the property is used for governmental purposes. That is not the language of the Constitution. This Court has never adopted that narrow limitation and the weight of authority is opposed

> to it. Much public property of municipalities exempt from taxation has, and can have, no governmental use. The test is whether it is devoted exclusively to a public use.'" (at p. 51).

Art. 7150, subd. 4 (supra) has been held to require that property exempt under its provisions must be "used for public purposes". City of Abilene v. State, 113 S.W.2d 631 (Civ.App. 1938, error dism.). In this case the court said:

> "It is quite apparent that the exemption declared in said R.S. 1925, art. 7150, is more comprehensive than the power which the Legislature possessed. The purpose of the Legislature is broad enough to exempt public property regardless of its use. This the Legislature was expressly denied the power to do. But it does not follow, we think, that the statute is for that reason wholly inoperative. We see no reason why it may not be operative, as an exercise of all of the power the Legislature had, to declare the exemption. The declared exemption includes public property used for public purposes and to that extent, we think, the statute is valid and operative." (at pages 635, 636) (underscoring added).

Our Supreme Court confirmed this holding without making reference to this case in A. & M. Consolidated Independent School Dist. v. City of Bryan, 143 Tex. 348, 184 S.W.2d 914 (1945).

We restate that the subject of the tax in question is only an undivided 1/3 interest in the fee simple title to the entire tract of land. All of this 1/3 interest and estate is of the same undivided but uniform kind, and is a freehold interest.

> "A freehold is an estate for life, or in fee simple. 1 Washburn, Real Prop. 41, 42." Bourn v. Robinson, 107 S.W. 873 (Civ.App. 1908) (at p. 876); 22 Tex.Jur.2d

643, Estates, Sec. 1.

The general principle of law that separate interests in realty are separately taxed to the several owners is well stated in Hager v. Stakes, 116 Tex. 453, 294 S.W. 835 (1927) as follows:

> "Real estate is ordinarily taxed as a unit; yet, where there have been severances by conveyance, exception, or reservation, so that one portion of the realty belongs to one person and other portions to others, each owner should pay taxes under proper assessment against him of the portion owned by him." (at p. 842).

The court cited State v. Downman, 134 S.W. 787 (Civ.App. 1911), which was affirmed by the U. S. Supreme Court in Downman v. State of Texas, 231 U.S. 353 (1913). In its affirming opinion the Supreme Court said:

> "Usually real estate is taxed as a unit; but as different elements of the land are capable of being severed and separately owned, the statute may authorize a separate assessment against the owners of the severed parts. Accordingly, if the title has been severed, land may be taxed to one, timber to another, or land to one and coal to another. The state court held that such was the law of Texas, in view of the general language of the statute defining real estate as including not only the land itself, but the buildings on the land and the minerals under the land."

The statute considered by both courts was Article 5062, Sayles' Ann. Civ. St. 1897, which was in every respect pertinent the same as present Art. 7146, V.C.S., supra.

The Court of Civil Appeals held that the grant with reference to coal in the land in question passed title to the coal and created a distinct taxable property in the tract of land. It said:

> "The grant is more than a mere license to enter and mine the coal; it is a conveyance of the coal itself, . . . The title passes to it as property. It is true its value must be added to the valuation of the land, but it by no means follows that it must be assessed with it. The parties have created two distinct properties in the same land; one holding one property right in the land, and the other a distinctly separate property interest therein. The statute, as before said, when read in view of the constitutional provision quoted, would require the assessment to be made in the names of the persons or corporations holding such property interest in the land. True, the total assessment must equal the value of the land augmented by the value of the coal or mine, but the assessment of each should be made separately according to the several holdings to the end that each 'shall pay a tax in proportion to the value of his, her, or its property.'" (at p. 795).

The law is settled that each freehold estate or interest of the same uniform kind in the same tract of land is a separate entity for purposes of ad valorem taxation. The following authorities support this proposition.

a) The case of Galveston Wharf Co. v. City of Galveston, 63 Tex. 14 (1884) held that the undivided 1/3 interest owned by the City of Galveston in certain realty and property was exempt from ad valorem taxes. The other 2/3 undivided interest owned by the Galveston Wharf Co., a private corporation, was held to be taxable against that corporation. This interpretation of the holding of this case is confirmed by statement of the court in Texas Turnpike Company v. Dallas County, 153 Tex. 479, 271 S.W.2d 400 (1954) (at p. 403).

b) a 9/10ths undivided interest owned in fee and the remaining 1/10th undivided fee interest in the same lot of land held under a life estate, both by the same person, are distinct and severable taxable estates or interests. Trimble v. Farmer, 157 Tex. 533, 305 S.W.2d 157 (1957).

c) Undivided interests created by oil and gas leases in the minerals in a tract of land are separate taxable estates.

Texas Co. v. Daugherty, 107 Tex. 226, 176 S.W. 717 (1915); Sheffield v. Hogg, 124 Tex. 290, 77 S.W.2d 1021 (1934), motion for reh. overruled, 124 Tex. 290, 80 S.W.2d 741 (1935); Victory v. Hinson, 129 Tex. 30, 102 S.W.2d 194 (1937); Buttram v. Gray County, 62 F.2d 44 (C.C.A. 5th 1932, cert. den. 289 U.S. 728); State v. University of Houston, 264 S.W.2d 153 (Civ.App. 1954, error ref. n.r.e.).

Further, the case of Galveston Wharf Co. v. The City of Galveston, supra, is conclusive in establishing the further principle that such an undivided interest may be "used", "devoted to", and "belong to" the owner "exclusively" within the meaning of Art. VIII, Sec. 2 and Art. XI, Sec. 9 of our State Constitution. See also State v. University of Houston, supra.

We believe that our holding with reference to this exclusive ownership and use of an undivided freehold interest of a uniform legal kind in a tract of land is not in conflict with the cases of St. Edwards' College v. Morris, 82 Tex. 1, 17 S.W. 512 (1891) and City of Longview v. Markham-McRee Memorial Hospital, 137 Tex. 178, 152 S.W.2d 1112. These two cases considered the exclusive use of buildings; the subject of our consideration in this opinion is property.

5.

You state that the District's interest in this land has been held only for the purpose of sale or conversion into cash and that the rental of the apartment house on the property was only a means of producing a temporary income from the property pending its sale. This holding and use by the District was for a public purpose. In addition to the authorities hereinafter considered we are of the opinion that Art. 4494n, Sec. 15 (supra) clearly authorized the District to hold the undivided interest in the land and to receive the income from it pending sale of the property, free from ad valorem taxes.

In State v. City of San Antonio, 147 Tex. 1, 209 S.W.2d 756 (1948), the facts were that the City of San Antonio and San Antonio Independent School District bought in the year 1938 a city lot at tax foreclosure sale for delinquent ad valorem taxes. The owner of the lot continued in possession until 1946; also he rented two buildings thereon to tenants and collected all rents.

The State and county argued that the land

> ". . . was not owned and held by the city and school district during that time only for public purposes, as contemplated by Art. XI, Sec. 9 of the Constitution. . . because: (1) no effort was made during those years to sell the lot; (2) the lot was never put to any public use because Barnes, the former owner, was permitted to remain in possession and to receive and retain the rents and profits therefrom; and (3) from the time the city and school district got their tax deed in 1938 until some time in 1946 he remained in continuous possession without being disturbed."

The trial court's judgment decided that the city and school district were 'owning and holding said property solely for the purpose of collecting taxes thereon." The Supreme Court said that this purpose

> "can mean nothing except that they were holding it until it could be re-sold. That was an owning and a holding for a public purpose, under Art. XI, Sec. 9, . . ."

of our Texas Constitution, and that Court held that because the lot was held and owned by the city and school district and for the stated public purpose that the land was exempt from ad valorem taxes. The Court in this case and on this point cited the case of City of Austin v. Sheppard, 144 Tex. 291, 190 S.W.2d 486. In this latter case the Court said:

> "It is undisputed that the property so purchased is merely being held by the city until it can find purchasers who are willing to pay

the prices asked therefor."

In this later case and on the basis of the purpose stated in this quotation, the Court held that the property was being held for a public purpose.

In the case of State v. City of Houston, 140 S.W.2d 277 (Civ.App. 1940, error ref.), the Court held that the temporary rental of two houses upon a tract of land which was held by the City of Houston for the purpose of resale did not change the purpose of the holding of the land from a public purpose.

Our holding in this opinion does not in any respect conflict with the two prior opinions of the Attorney General of Texas, Nos. O-2506 (1940) and V-1399 (1952). Those opinions may be distinguished on the basis that the properties therein considered were being held for proprietary purposes for the production of income only.

SUMMARY

The undivided interest in the fee in the tract of land held by the Dallas County Hospital District for purpose of sale and conversion into cash is held exclusively and for a public purpose and is exempt from all ad valorem taxes.

Yours very truly,

WILL WILSON
Attorney General of Texas

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